IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/04/2004

CORAM

THE HON'BLE MR.JUSTICE N.V.BALASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

A.S.No.198 of 1992

Arjuna Pillai ... Appellant

-Vs-

1. Kandammal
2. Parvathi ... Respondents

Appeal against the judgment and decree in O.S.No.65 of 1988 on the file of the Subordinate Judge, Srivilliputhur dated 18.4.1990.

!For appellant : Mr.N.Anand Venkatesh for
Mr.V.Sundararajan

^For respondents: Mr.K.Rajakumar

:JUDGMENT

(Judgment of the court was delivered by M.CHOCKALINGAM,J.)
Plaintiff, who failed in the suit for declaration and consequential permanent injunction, has preferred this appeal.
2. Short facts which lead to the filing of the suit are as follows:-
The suit properties originally belonged to one Venugopal Pillai who had no issues even through both of his wives. Twenty years prior to filing of the suit, the plaintiff was given in adoption to the said Venugopal Pillai and from that time, he was living with Venugopal Pillai. On 17.2.1988 Venugopal Pillai died intestate leaving behind him his two wives and the plaintiff as his heirs and accordingly, both the wives of Venugopal Pillai and the plaintiff became entitled to the suit property along with the defendants in the suit who are the sisters of Venugopal Pillai. The defendants claim title to the suit property by alleging that the said Venugopal Pillai executed a settlement deed in their favour on 26.7.1975 which is marked as Ex.A3. A reading of the settlement deed would clearly indicate that it was not executed by him out of free will and volition and apart from that Ex.A3 was also not acted upon and it has not come into force. The plaintiff has been in possession of the suit property. A suit for partition was filed on the basis of such Ex.A3 settlement deed by the second defendant against the first

defendant in O.S.No.112 of 1984 on the file of the Sub Court, Srivilliputhur wherein preliminary decree was passed and final decree proceedings was also initiated. A Commissioner was also appointed in an Application filed in the final decree proceedings and pursuant to that while the properties are in possession of the plaintiff, with the assistance of police, the second item of the suit property was broke open of which the plaintiff came to know later and that necessitated for filing of the suit for the said relief of declaration and consequential permanent injunction.

3. The first defendant remained ex parte. The second defendant filed written statement stating that it is true that the property belongs to Venugopal Pillai, but, he never adopted the plaintiff. He also executed settlement deed in favour of defendants 1 and 2 under Ex.A3 and the property also came to the possession of the defendants and for partition, O.S.No.112 of 1984 has been filed and preliminary decree has also been passed therein and the second defendant, in the final decree proceedings, filed an application for appointment of commissioner also. In such circumstances, in order to defeat the rights of the second defendant under the settlement deed and fruits of the decree in O.S.No.112 of 1984, the first defendant has instigated the plaintiff to file the suit and hence, the claim has to be rejected.

4. The Trial Court, on the basis of the pleadings, framed necessary issues viz., five and rejected the claim as not sustainable. Aggrieved against that, the plaintiff has preferred the present appeal.

5. Following points are raised for determination:-

i) Whether the plaintiff has proved the alleged adoption of himself to Chelliah alias Venugopal Pillai?

ii) Whether the settlement deed Ex.A3 dated 26.7.1975 has been proved as true, genuine and binding upon the plaintiff?

iii) Whether the plaintiff is entitled to any other relief?

6. Heard the learned counsel for the appellant and the respondents.

The specific case of the plaintiff is that he was adopted to Chelliah alias Venugopal Pillai twenty years prior to filing of the suit. In order to prove his case of alleged adoption, he examined himself as PW1, his natural father one Subramania Pillia as PW2 and one of the wives of the said Venugopal Pillai viz., Ramu Ammal as PW3. At the outset, it has to be pointed out that a reading of the plaint would clearly reveal that except by alleging that he was adopted by Venugopal Pillai twenty years prior to filing of the suit, not even the date on which he was adopted is mentioned therein and the mode of adoption is not spoken to in the plaint. Thus it can be seen that necessary and requisite particulars are not furnished in the plaint in order to prove the adoption. The plaintiff has been examined as PW1 and his natural father has been examined as PW2. His evidence would clearly indicates or rather falsifies the case of the plaintiff that he was given in adoption twenty years prior to filing of the suit and the Trial Court also pointed out the inconsistencies in the evidence of P.Ws. 1 and 2. It is true that one of the wives of Venugopal Pillai has been examined as PW3 to speak about the adoption, but, there is discrepancy in the evidence of PW3 when compared with that of P.Ws.1 and 2 , the plaintiff and his natural father. Thus, it would clearly indicate that PW3 has been examined in order to develop the evidence of P.Ws. 1 and 2, but, in vein. In respect of adoption, lack of procedure was noticed by the Trial Court apart from that it was also not proved and in the absence of proof with regard to adoption of the plaintiff it can be held

that since the plaintiff is claiming the suit property on the basis of the alleged adoption, he cannot claim anything in the property in question.

7. It is a further point that in view of the quarrel between the sister viz., defendants 1 and 2, a suit was filed by the second defendant herein in O.S.No.112 of 1984 which was also contested by the first defendant herein. That suit was for partition of the suit property as per the settlement deed executed by Venugopal Pillai in favour of his sisters viz., the defendants herein and that suit was also decreed. It is also and admitted fact that an application was filed in that suit for appointment of advocate commissioner, and an advocate commissioner was appointed and he also made inspection and thus, there was a long interval in between and taking into consideration the fact that the plaintiff herein is the son in law of the first defendant, it can be seen that the plaintiff herein, at the instigation and instance of the first defendant herein, filed the present suit.

8. In the present suit, the first defendant has conveniently remained ex parte and it would be clear that this is the final attempt made by the first defendant by filing this suit through the plaintiff, her son in law to defeat the rights of the second defendant to which she is entitled to under the settlement deed and the fruits of the decree passed in O.S.No.112 of 1984 and it was at the stage of final decree proceedings and it would be suffice to state that the plaintiff has not proved the alleged adoption of himself by Venugopal Pillai and therefore, he has no right to claim the suit property. The Trial Court is perfectly correct in rejecting the case of the plaintiff that he cannot get the relief of declaration and consequential permanent injunction. Hence, the dismissal of the suit is perfectly correct.

9. We do not find any reason to interfere with the judgment and decree of the Trial Court. The appeal is dismissed leaving to parties to bear their costs.

Index: Yes

Internet: Yes

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To

The Subordinate Judge,
Srivilliputhur.

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